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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 OAKLAND DIVISION
14

15 **THOMAS RAY WOODSON,**

16 Plaintiff,

17 v.

18 **J. RODRIGUEZ, et al.,**

19 Defendants.
20

C 07-4925 CW

**[PROPOSED] ORDER
GRANTING DEFENDANTS'
MOTION TO DISMISS**

Judge: The Honorable
Claudia Wilken

21 **INTRODUCTION**

22 This is a civil rights action under 42 U.S.C. § 1983. Plaintiff alleges that Defendants J.
23 Rodriguez, M. Kircher, J. Parra, D. Vega, and E. Camarena (Defendants) used excessive force
24 against him on March 23, 2006, during an altercation at Salinas Valley State Prison, in Soledad,
25 California. Plaintiff also alleges that other officials at SVSP retaliated against him for submitting
26 an inmate grievance regarding the March 23, 2006 incident.

27 Defendants move to dismiss this action under Federal Rule of Civil Procedure 12(b).
28 Specifically, Defendants contend that Plaintiff's retaliation claim fails because Plaintiff has not

1 tied any of the named defendants to the alleged retaliatory actions. Defendants also contend that
 2 Plaintiff's factual allegations do not meet the elements for a retaliation claim. Lastly, Defendants
 3 argue that Plaintiff did not exhaust administrative remedies for his claim for monetary damages
 4 for the alleged excessive force, as required by the Prison Litigation Reform Act, 42 U.S.C. §
 5 1997e(a).

6 The Court has reviewed the moving papers, the declarations and exhibits in support and
 7 opposition thereto, and any reply. Good cause appearing and for the reasons set forth below, the
 8 motion to dismiss is GRANTED.

9 .LEGAL STANDARD

10 Under Federal Rule of Civil Procedure 12(b)(6), a case should be dismissed if it fails to
 11 state a claim upon which relief can be granted. Although a complaint attacked by a motion to
 12 dismiss does not need "detailed factual allegations," it must contain "more than labels and
 13 conclusions, and a formulaic recitation of the elements of a cause of action will not do." *See Bell*
 14 *Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (internal citation omitted). Where a
 15 complaint's defects are not curable, the court should dismiss without leave to amend. *See*
 16 *Coakley v. Murphy*, 884 F.2d 1218, 1222 (9th Cir. 1989).

17 Under *Wyatt v. Terhune*, 315 F.3d 1108, 1119 (9th Cir. 2003), this motion is also brought in
 18 part as an unenumerated Federal Rule of Civil Procedure 12(b) motion. In ruling on an
 19 unenumerated Rule 12(b) motion, the Court may consider evidence other than that which is
 20 presented by the complaint itself. *Id.* at 1119-20 ("In deciding a motion to dismiss for failure to
 21 exhaust nonjudicial remedies, the court may look beyond the pleadings and decide disputed
 22 issues of fact.").

23 DISCUSSION

24 Under 42 U.S.C. § 1983, any "person" who violates the constitutional rights of another
 25 under color of state law is liable. *Leer v. Murphy*, 844 F.2d 628, 632 (9th Cir. 1988). A person
 26 deprives another of a constitutional right "if he does an affirmative act, participates in another's
 27 affirmative acts, or omits to perform an act which he is legally required to do that *causes* the
 28 deprivation" of a right. *Id.* at 633 (emphasis in original). The causation analysis "must be

1 individualized and focus on the duties and responsibilities of each individual defendant whose
2 acts or omissions are alleged to have caused a constitutional deprivation.” *Id.*; *see also Resnick*
3 *v. Hayes*, 213 F.3d 443, 449 (9th Cir. 2000) (“In a constitutional tort, as in any other, a plaintiff
4 must allege that the defendant’s actions caused him some injury.”). Here, Plaintiff does not
5 allege that the named Defendants, J. Rodriguez, M. Kircher, J. Parra, D. Vega, and E. Camarena,
6 caused the disciplinary “write up,” the purportedly-retaliatory transfer, or his placement in
7 administrative segregation. Instead, Plaintiff complains that some unnamed individual wrote a
8 rules violation report against him, and that other individuals not named as defendants authorized
9 his transfer to another prison and placement in administrative segregation. Thus, Plaintiff has
10 failed to show that any of the Defendants retaliated against him.

11 Further, Plaintiff fails to state a claim for retaliation because his allegations merely allege
12 that some adverse action was taken after he submitted an inmate grievance. As the Court
13 explained to Plaintiff in its May 21, 2008 Order, his allegation “that the transfer occurred after
14 the grievances were filed does not, without more, establish retaliation.” Ultimately, a retaliation
15 claim cannot rest solely on the fallacy of *post hoc, ergo propter hoc* (i.e., after this, therefore
16 because of this). *See Huskey v. City of San Jose*, 204 F.3d 893, 899 (9th Cir. 2000). Plaintiff’s
17 entire retaliation claim rests on his allegations of “suspect” or “dubious” timing of the allegedly
18 retaliatory actions. Plaintiff’s retaliation claim offers nothing more than “labels and
19 conclusions,” and thus should be dismissed. *See Twombly*, 127 S. Ct. at 1965.

20 Additionally, Plaintiff’s claim for monetary damages for alleged excessive use of force
21 during the March 23, 2006 incident is not cognizable because Plaintiff did not exhaust
22 administrative remedies for this claim, as required by the PLRA. The PLRA provides that “No
23 Action shall be brought with respect to prison conditions under section 1983 . . . until such
24 administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). Proper
25 exhaustion under the PLRA requires that an inmate comply with applicable administrative
26 guidelines and procedural rules. *See Woodford v. Ngo*, 548 U.S. 81, 90 (2006). These
27 procedural rules “are defined not by the PLRA, but by the prison grievance process.” *Jones*, 549
28 U.S. at ___, 127 S. Ct. at 922. Ultimately, “[t]he level of detail necessary in a grievance to

1 comply with the grievance procedures will vary from system to system and claim to claim, but it
 2 is the prison's requirements, and not the PLRA, that define the boundaries of proper exhaustion."
 3 *Id.* at ___, 127 S. Ct. at 923. In situations where a prisoner has failed to exhaust administrative
 4 remedies, the proper course of action is dismissal without prejudice. *See Wyatt*, 315 F.3d at
 5 1120.

6 The California Department of Corrections and Rehabilitation (CDCR) has an administrative
 7 appeals system for prisoner complaints. *See* Cal. Code Regs. tit. 15, § 3084, *et seq.* Under this
 8 appeals system, "Any inmate or parolee under the department's jurisdiction may appeal any
 9 departmental decision, action, condition, or policy which they can demonstrate as having an
 10 adverse effect upon their welfare." *Id.* at § 3084.1(a); *see also Ngo*, 548 U.S. at 85-86.
 11 (describing CDCR prisoner grievance procedure). The California regulations require that an
 12 inmate "describe the problem and action requested" in the requisite CDCR Form 602. Cal. Code
 13 Regs. tit. 15, § 3084.2(a); *Butler v. Adams*, 397 F.3d 1181, 1183 (9th Cir. 2005).

14 Here, the exhibits to Plaintiff's complaint reflect that Plaintiff submitted a CDCR Form 602
 15 inmate grievance regarding his claim of excessive force.^{1/} This grievance, which was assigned
 16 log number SVSP-C-06-00952, was received by the prison on March 27, 2006. According to the
 17 electronic records maintained by the prison, this is the only grievance submitted by Plaintiff
 18 within 15 days after the March 23, 2006 incident at issue in this litigation.^{2/} Plaintiff's grievance
 19 did not request any monetary, punitive or nominal damages, which is the relief he seeks in this
 20 Court. Likewise, Plaintiff's inmate grievance did not request a transfer to another prison. Thus,
 21 he did not comply with the procedural requirements of the California regulations, which require
 22 that an inmate "describe the problem *and action requested*." Cal. Code Regs. tit. 15, § 3084.2(a)
 23 (emphasis added). In fact, Plaintiff's inmate grievance requested solely that his allegations of
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25 1. In ruling on a motion to dismiss, a court can rely on documents appended to the complaint
 26 without converting the motion into a motion for summary judgment. *See Lee v. City of Los Angeles*,
 27 250 F.3d 668, 688 (9th Cir. 2001).

28 2. Any grievance submitted later than 15 days after the incident in question would be
 untimely. Cal. Code Regs. tit. 15, § 3084.6(c); *Ngo*, 548 U.S. at 83.

1 excessive force be investigated, that the officers involved be disciplined, and that the institution
2 abide by the no-reprisal policy. Accordingly, he failed to exhaust by complying with the prison's
3 procedural guidelines, and this claim will be dismissed. *Ngo*, 548 U.S. at 90.

4 **CONCLUSION**

5 In light of the foregoing, Plaintiff's retaliation claim is dismissed, without leave to amend.
6 Plaintiff's excessive force claim is also dismissed, without prejudice.

7 All claims having been disposed of, the Clerk shall enter judgment in this case.^{3/}

8 IT IS SO ORDERED.

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10
11 Dated

12 Claudia Wilken
13 United States District Judge

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28 3. In light of this Order, all other pending motions (including Plaintiff's motion for
appointment of counsel) are denied as moot.

[Proposed] Ord. Granting Defs.' Mot. Dism.

T. R. Woodson v. J. Rodriguez, et al.
C 07-4925 CW